IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 915 of 2001
in
SPECIAL CIVIL APPLICATIONNo 3087 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

KISHORBHAI JAYANTIBHAI DHAMECHA
Versus
GOPALBHAI N SHAH

---

Appearance:
1. LETTERS PATENT APPEAL No. 915 of 2001
MR DEEPAK P SANCHELA for Appellant No.
MR JAYANT PATEL for Appellant No.
Mr Amit Panchal for Respondent No. 7
Mr P R Joshi, AGP for Respondent No. 2-4,6
MR KARTIK V PANDYA for Respondent No. 5

---

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.P.BUCH

Date of decision: 25/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the request of the learned Advocates, this appeal is finally heard today. It has been submitted by learned Advocate Mr Jayant Patel appearing for the appellants that the order passed by the learned Single Judge dated 16.8.2001 in Special Civil Application No.3087 of 2001 was passed without hearing the appellants. By virtue of the impugned order, the appellants have been adversely affected because the said order restrains the appellants from using the premises occupied by them.

2. Learned AGP Mr P R Joshi, learned Advocate Mr Amit Panchal and Mr Gopalbhai N Shah, original petitioner in Special Civil Application No.3087/2001 have submitted that the present appellants were using the premises in violation of legal provisions. Moreover, the premises which has been occupied by the appellants was to be used only for residential purpose but the appellants are using the premises for commercial purpose. In the circumstances, it has been submitted by them that the learned Single Judge has rightly prevented the appellants from using the premises in question for commercial purpose.

3. We have heard the learned Advocates and have also perused the record pertaining to the case. It is not in dispute that in the petition, the appellants have not been joined as party-respondents and the respondents are adversely affected by virtue of the impugned order passed by the learned Single Judge. At this stage, we would not like to go into the legality of the use to which the property is put to, as the matter is pending before the learned Single Judge. Only on the ground that the appellants have not been joined as party-respondents in the petition and that the order has been passed against the appellants, we allow this appeal and the order dated 16.8.2001 passed by the learned Single Judge in Special Civil Application No.3087/2001 is quashed and set aside though the portion of the order with regard to joining Gandhinagar Urban Development Authority as respondent no.5 and with regard to admission of the petition is not being set aside.

4. In the course of hearing, the original petitioner Mr. Gopalbhai N Shah has submitted that if the appellants submit an application for being joined as parties in Special Civil Application No.3087/2001, he would not raise any objection on their being joined as

parties. Learned Advocate Mr Jayant Patel appearing for the appellants has submitted that the appellants shall submit an application for being joined as party-respondents in Special Civil Application No.3087/2001. He has further submitted that such an application shall be circulated within one week from today and a copy of the application shall be given to each of the parties. It would also be open to the original petitioner to make submissions before the learned Single Judge so that his case for grant of interim relief can be considered. Needless to say that it would be open to the litigants to raise all legal submissions before the learned Single Judge.

5. The appeal stands disposed of as allowed with no order as to costs.

The main petition tobe notified before the learned Single Judge as soon as possible and preferably within a week from today.

25.9.2001 [A R Dave, J.]

[D P Buch, J]
msp